

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

Sl. No. 129/2025

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 26/9/JPR/2023

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

PARAM DAIRY LIMITED

...Operational Creditor/ Petitioner

VERSUS

JHANDEWALAS FOODS LIMITED

...Corporate Debtor/ Respondent

MEMO OF PARTIES

CP No. (IB)- 26/9/JPR/2023

PARAM DAIRY LIMITED

R/o: - Param Tower, 11/5B Pusa

Road, New Delhi- 110005.

Email: param@paramdairy.com

... Operational Creditor/ Petitioner

VERSUS

JHANDEWALAS FOODS LIMITED

R/o: - B-70, 1st Floor, Upasana

House, Janta Store, Bapu Nagar,

Jaipur-302015.

Email: acc.jhandewalas@gmail.com

... Corporate Debtor/ Respondent

Sd/-

Sd/-

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Prateek
Court Officer

National Company Law Tribunal
Jaipur

For the Petitioner : Mohana Sharda, Adv.
Vinay Kumar Jain, Adv.
For the Respondent : Deepanshu Bansod, Adv.
Amit Dhall, Adv.

Order Pronounced On: 04.07.2025

ORDER

1. The present Petition has been filed by *M/s Param Dairy Limited* ('Operational Creditor'/ 'Petitioner') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Jhandewalas Foods Limited* ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') alleged for non-payment of operational dues amounting to Rs. 3,86,77,404.54/- which comprises of the outstanding principal amount of Rs. 3,08,07,213/- and simple interest @18% p.a. amounting to Rs. 78,70,191.54/- calculated till 14.12.2022.

2. Brief Facts and Submission of the Operational Creditor

2.1. It is submitted that the Corporate Debtor issued Verbal Purchase Order for delivery of "*Butter and Ghee Loose*" to the Operational Creditor. In accordance with the terms of the order, the Petitioner has delivered the dairy products, for which several invoices were raised. Out of total dues, the Corporate Debtor had made partial payments leaving an outstanding liability of Rs. 3,08,07,213/- (Rupees Three Crore Eight

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Lakh Seven Thousand Two Hundred Thirteen Only) due and payable by the Corporate Debtor.

2.2. Further, it is submitted that the Corporate Debtor has deliberately neglected to make payment of the outstanding dues. Consequently, the Operational Creditor issued a Demand Notice dated 02.11.2022 under Section 8 of the Code to the Corporate Debtor. In response, the Corporate Debtor *vide* its reply dated 14.12.2022, denied all the contentions raised in the Demand Notice and submitted that the Corporate Debtor suffered losses amounting to Rs. 3,33,28,750/- due to the supply of under-quality goods by the Petitioner, which need to be adjusted.

2.3. However, it is submitted by the Petitioner that prior to sending the Demand Notice the Corporate Debtor has neither disputed nor denied the claims raised by the Operational Creditor; rather it has acknowledged the debt.

2.4. The relevant details as reflected in Part IV of the Petition are as reproduced hereunder:

PART IV

PARTICULARS OF OPERATIONAL DEBT

1. Total Amount of Debt, Details of Transactions on account of which debt fell	The total amount of debt is Rs. 3,86,77,404.54/- (adjusted amount) which comprises of the outstanding principal amount of Rs. 3,08,07,213/- and simple
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	due, and the Date from which such debt fell due.	<p>interest @18% P.A amounting to Rs. 78,70,191.54/- calculated till 14.12.2022, further applicable till the date of realization of the due amount in full.</p> <p>It is relevant to mention that after sending the Demand Notice in Form- 3 dated 02.11.2022, the Corporate Debtor had made an additional part payment of Rs. 20,00,000/- towards the repayment of debt, and the said amount has been adjusted with the total outstanding amount payable to the Operational Creditor.</p>
2.	Amount claimed to be in default and the date on which the default occurred (Attach the working for computation of amount and dates of default in tabular form)	<p>1. The total amount of debt as on 14.12.2022 is Rs. 3,86,77,404.54/- (adjusted amount) [Total Debt] which comprises of the outstanding principal amount of Rs. 3,08,07,213/- and simple interest @18% P.A calculated till 14.12.2022, amounting to Rs. 78,70,191.54/-, further applicable till the date of realization of the due amount in full.</p> <p>2. Date of Default: 12.08.2022</p>

2.5. Further, it is submitted that the Respondent's contention regarding emails allegedly sent to the Operational Creditor for account reconciliation is incorrect. It is stated that no such email communication took place between the parties. Hence, the contentions made by the Corporate Debtor are unsupported by any evidence.

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2.6. The Petitioner denied the existence of a pre-existing dispute as contended by the Corporate Debtor and for the same the Petitioner relied on the judgments of Hon'ble NCLAT in the case of *Deepak Modi vs. Shalfeyo Industries (P) Ltd. Company Appeal (AT) (Insolvency) No. 1019 of 2022* had held that there must be a pure pre-existing dispute, meaning thereby that genuine pre-existing dispute must exist in rejecting an application under Section 9 of the Code and not a dispute which can be termed as a moon shine defence.

3. Submissions of the Corporate Debtor-

3.1. The Respondent is a public company incorporated under the provisions of the Companies Act, 1956 on 14.08.2006, duly registered with the Registrar of Companies, Jaipur having CIN: L15209RJ2006PLC022941 and its registered office is situated at B-70, First Floor, Upasana House, Janata Store, Bapu Nagar, Jaipur, Rajasthan. The Respondent has an Authorized Share Capital of Rs. 12,00,00,000/- (Rupees Twelve Crores Only) and Paid-Up Share Capital of Rs. 10,26,03,580/- (Rupees Ten Crores Twenty- Six Lakhs Three Thousand and Five Hundred Eighty Only).

3.2. The Respondent is engaged in the business of manufacturing and producing, importing and exporting and, buying and selling of dairy products and agro based products. It is submitted that the Respondent and the Petitioner had in business relations since 2006.

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- 3.3. The Operational Creditor served a Demand notice dated 02.11.2022 upon the Corporate Debtor alleging default in payment of the invoices. However, the Corporate Debtor replied to the Demand Notice where it raised dispute concerning the quality of the goods supplied by the Operational Creditor. The said dispute was already in the knowledge of the Operational Creditor.
- 3.4. It is contended that the present Petition appears to have been filed primarily to delay or undermine the legitimate claims of the Respondent, which were outlined in its reply dated 14.12.2022 to the Demand Notice. This reply letter was never addressed through any written communication, despite the fact that many interactions between the parties were oral. Additionally, the Operational Creditor had periodically agreed to adjust the amounts in dispute with the Respondent.
- 3.5. Further, it is submitted that in order to clarify the accounts, emails were sent to the Operational Creditor requesting them to reconcile their accounts and proceed with adjustments. However, the Operational Creditor has not complied with these requests, responding only with assurances of future actions citing the continuance of business as a reason for delay. Further, on 04.03.2021 tins containing ghee were returned due to their unsatisfactory quality. Although, this return entry has not been properly addressed. In addition, an entry amounting to Rs.

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53,222/- spanning the period from 01.05.2021 to 17.05.2021 has been identified as spurious, with no verifiable connection to any legitimate transaction.

- 3.6. It is submitted that the Operational Creditor cannot make the Corporate Debtor liable for any interest payments. The interest claimed in this Petition cannot form part of the alleged operational debt; only the principal amount, if due, can be considered operational debt. Further, no agreement detailing interest rates has been filed in the Petition meaning no such agreement can be implied.
- 3.7. The Respondent stated that a significant dispute exists between the Corporate Debtor and the Operational Creditor. The dispute includes non-compliance with contractual terms, issues with the quality of services, disputes over adjustments, and discrepancies regarding the quantity of goods. The Operational Creditor supplied ghee, but four consignments were found to be of substandard quality upon examination by a reputable test house.
- 3.8. The subsequent test report conclusively verifies that the goods failed to meet the stipulated customer specifications. As a result, the Corporate Debtor promptly returned the consignments. However, no adjustments or debit notes were issued for these returned goods, which led to the initiation of a civil suit before the Hon'ble Commercial Court in Jaipur. This legal action was taken to resolve the ongoing dispute and seek

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appropriate remedies. It is also contended by the Respondent that the Demand notice does not specify the exact date on which the default occurred, and instead, it uses vague dates.

3.9. Additionally, the Corporate Debtor had place on record its certified copy of ledger statement along with the debit notes issued by it. The Corporate Debtor also submitted that in terms of the ongoing civil dispute between the parties, an outstanding sum of Rs. 26,69,808/- is claimed as principal amount to be recovered from the Operational Creditor, along with interest and other charges, aggregating to a total claim of Rs. 47,99,907/- against the Operation Creditor. The aforementioned amount claimed by the Respondent forms part of trade receivables arising out of business transaction between the parties and has been duly reflected under the head "Trade Receivables" in the books of accounts of the Corporate Debtor.

3.10. In support of its argument regarding the existence of a pre-existing dispute, the Corporate Debtor relied on the following judgments:

- a. Reliance is placed on paras 28-30 of the decision in the matter of '*M/s. Innoventive Industries Ltd. Vs. ICICI Bank, Civil Appeal Nos. 8337-8338 of 2017 (Paras 28-30)*' in support of its contention.
- b. Reliance placed on para 15 of decision in '*Transmission Corporation vs. Equipment Conductors*' (Para 15) wherein it has been held that IBC is not intended to be substituted to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked.
- c. Hon'ble NCLAT in the matter of '*Amrop India Pvt. Ltd. Vs. the Hi-tech Gears Ltd., NCLAT Delhi*' (para 12) held as follows-

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12. It is a well settled proposition that for a pre-existing dispute to be a ground to nullify an application under Section 9, the dispute raised must be truly existing at the time of filing a reply to notice of demand as contemplated by Section 8(2) of IBC or at the time of filing the Section 9 application”;

- d. Reliance was also placed on (paras 13, 38 & 62) in the matter of “Mahmod Alam Khan Vs. Ahmed Alam Khan, NCLAT Chennai.”
- e. Hon’ble NCLAT in the matter “Khushbu Dye Chem Pvt. Ltd. Vs. Chemical Suppliers India Pvt. Ltd., NCLAT Delhi (Para 38)- has further reaffirmed that pre-existing disputes defeat Section 9 claims- Para 38 is reproduced here under-
“It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making; and”
- f. Reliance placed on judgement of Hon’ble NCLAT in the matter “Oyster Steel and Iron Pvt. Ltd. Vs. Brilliant Metals Pvt. Ltd; NCLAT Delhi” – (Para 22) held that “Moreover, in view of running account maintained between the parties and taking note of trade practice, Adjudicating Authority has made no error of judgment in recording the findings that the amount between the parties had not crystallized and therefore, the essential ingredients of debt and default was missing in the present matter. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor. Where operational creditor seeks to initiate insolvency process against a Corporate Debtor, it can only be done in clear cases where no real dispute exists between the two which is not so borne out given the facts of the present case.”

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4. Findings

- I. We have perused all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the state of Rajasthan. Therefore, this Adjudicating Authority has the jurisdiction to entertain this Petition. Further, this matter is within the purview of the Laws of Limitation, as the default arose in 2022, and the Application was filed before this Adjudicating Authority in 2023. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Petition.
- II. Before we delve in the matter at hand it is important to refer to the ingredients which have to be satisfied for the present matter to be admitted under Section 9 of the Code. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. The following essentials are as follows-

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration

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proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

- III. Therefore, to initiate CIRP in the present matter the aforementioned conditions have to be satisfied. In the present Petition, it is undisputed fact that the Operational Creditor had business relations with the Corporate Debtor, providing goods on a regular basis and issuing subsequent invoices. The Part IV of the Petition reflects that there is an outstanding liability of principal amount of Rs. 3,08,07,213/- due and payable by the Corporate Debtor. The Petitioner has annexed the invoices and a computation sheet detailing the invoice amounts and the payments received against them. In support of this, the Petitioner has also annexed the ledger account maintained by it, which clearly shows that the Corporate Debtor did not make full payment for the invoices raised by the Operational Creditor during the financial year 2021–2022.
- IV. It is abundantly clear from the documents produced before us that there was an operational debt which had become due and payable by the Corporate Debtor towards the Operational Creditor. However, the Corporate Debtor contended existence of a pre-existing dispute in the reply to the Demand Notice and in Reply to the Petition.

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- V. The Corporate Debtor, in its Reply has raised an issue of pre-existing dispute pertaining to goods supplied, specifically *ghee*, alleging that four invoiced consignments were found to be of substandard quality based on testing conducted by an accredited Test House. It is further submitted that the Corporate Debtor had sent emails to the Operational Creditor, requesting reconciliation of accounts and adjustment for the alleged losses incurred due to the substandard quality of goods. However, the Corporate Debtor has failed to place on record any documentary evidence or correspondence reflecting such communication between the parties prior to issuance of Demand Notice dated 02.11.2022.
- VI. Additionally, the Corporate Debtor initiated a civil suit before the Hon'ble Commercial Court at Jaipur against the Operational Creditor owing to non-resolution of above-mentioned pre-existing disputes. The Corporate Debtor has annexed non-starter report dated 29.03.2023 pertaining to the civil suit. At this juncture, it is important to refer to the judgment of Hon'ble NCLAT in the matter of "*Naresh Sevantilal Shah V/s Malharshanti Enterprises & Anr. [CA (AT) (Ins.) No. 415 of 2020*" the Hon'ble NCLAT in Para 36 held that, Para 36 is as follows: -

"36. In the light of the above observations and the records placed before us. We are of the view that there was no dispute existing prior to the first demand notice and only disputes raised prior to the first demand notice are relevant to determine its pre-existence and disputes raised thereafter are totally irrelevant for the same. Also the arbitration was invoked after the first demand notice. Thus the

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Adjudicating Authority have rightly concluded that there was no dispute existing prior to the demand notice issued under section 8 of I&B Code.”

Accordingly, based on aforementioned judgment it is important to note that in the present matter as well the civil suit was initiated by the Corporate Debtor subsequent to the issuance of the Demand Notice under Section 8 of the Code and otherwise also the civil suit has remained a non-starter before the Commercial Court.

VII. A bare perusal of the documents placed on record and aforementioned judgments reveal that the Corporate Debtor’s contentions regarding the alleged pre-existing dispute were raised only subsequent to the issuance of the Demand Notice. Accordingly, the defences put forth by the Corporate Debtor appear to be an afterthought, raised in response to the Petition filed before this Adjudicating Authority. Therefore, it is evident that no pre-existing dispute existed between the parties prior to the issuance of the Demand Notice.

VIII. The Corporate Debtor also contended that the Petitioner has arbitrarily levied interest and has mentioned different interest amounts in the Demand Notice and the Petition. However, there is no agreement between the parties- whether oral or written regarding the charging of interest. The invoices annexed by the Operational Creditor to the Petition also does not mention about any interest component. In so far as the contention of the Corporate Debtor regarding the interest component of

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the Debt is concerned, the amount of interest claimed is Rs. 78,70,191.54/- and the principal sum is Rs. 3,08,07,213/-, since the principal sum is beyond the threshold limit as prescribed under Section 4 of the Code and the same has been duly proved as adjudicated above, we are of the opinion that adjudication of the issue concerning the levy of interest has become theoretical in nature as the amount of principal debt is beyond the threshold limit and hence, regardless of the adjudication apropos the component of interest, the Petition will subsist.

- IX. Therefore, in the present matter at hand, there is a clear 'debt', repayment of which has been 'defaulted' by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute does not seem to be confirmed.
- X. It is a well-settled position that under Section 9 of the Code, to initiate CIRP proceedings, the Petitioner must prove that the debt is due, has not been paid, and is undisputed. In this case, it has been demonstrated that the Corporate Debtor has failed to make payment of the amount specified in the statutory notice to date. Additionally, the Corporate Debtor has not placed on record any credible correspondence or evidence substantiating the existence of a pre-existing dispute prior to the issuance of the Demand Notice.
- XI. Thus, all conditions under Section 9 of the Insolvency and Bankruptcy Code (IBC) are satisfied. Therefore, we are inclined to initiate CIRP for

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the Corporate Debtor, as all requirements of Section 9 of the Code have been satisfied.

- XII. Further, we hereby appoint Mr. Mahesh Chandra Sharma having registration no. IBBI/IPA-003/N-00433/2023-2024/14287 as Interim Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI to conduct the Insolvency Resolution Process as mentioned under the Insolvency and Bankruptcy Code, 2016. The email address of the IRP is msharma2002@yahoo.co.in
- XIII. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Petitioner.
- XIV. Consequences of initiation of CIRP shall be inter-alia as follows:
- a. The IRP appointed by the Adjudicating Authority, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under

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the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

- b. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate to Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- c. The said IRP shall act strictly in accordance with the provisions of the Code. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh Only) to be paid by the Petitioner to the Interim Resolution Professional immediately to initiate the process which shall be adjusted towards the expenses payable to the Resolution Professional. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- d. The Registry is directed that this Order shall be communicated within three days from the date of passing of this Order to the Petitioner, Corporate Debtor as well as the IRP appointed by this Adjudicating

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Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

XV. Accordingly, CP No. (IB)-26/9/JPR/2023 is admitted.



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Court Officer
National Company Law Tribunal
Jaipur

Sd/-

**REETA KOHLI
JUDICIAL MEMBER**

Sd/-

**KAVITA BHATNAGAR
TECHNICAL MEMBER**

RR/LRA

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